THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

Writ Petition No.14212 of 2000

%30.03.2005

#B.Bhoomarajam,S/o Sriramulu.

Petitioners

Vs.

$The Joint Collector, Ranga Reddy District, Hyderabad and another

….Respondents

Counsel for the Petitioner: MR.B.MAHENDER REDDY

Counsel for the Respondents: GP FOR ASSIGNMENTS

<Gist :

>Head Note:

? Cases referred:

1. 1997 (4) ALD 359 (D.B.)

2. AIR 1969 SUPREME COURT 1297

3. 1996 (2) AN.W.R. 511 (D.B.)

4. (2003) 7 SUPREME COURT CASES 667

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 14212 of 2000

Between:

B.Bhoomarajam, S/o Sriramulu, Resident of 1-8-700/21, Nallakunta, Hyderabad.

..... PETITIONER

AND

1. The Joint Collector, Ranga Reddy District, Hyderabad.
2. The District Revenue Officer, R.R District, O/o District Collector, R.R District, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction, one in the nature of Writ of Mandamus, i)declaring the impugned order No.E5/1007/91 dt.20.5.2000 of the Joint Collector, Ranga Reddy District, in cancelling the patta/assignment of petitioner's land to an extent of Ac.10.00 in Sy.no.805 in Medchal Village, RR District, as arbitrary, illegal, without jurisdiction, violative of Art.14,21 and 300-A of the Constitution of India, and the same be set aside, and ii)costs be awarded to the petitioner and pass.

Counsel for the Petitioner: MR.B.MAHENDER REDDY

Counsel for the Respondents: GP FOR ASSIGNMENTS

The Court made the following:

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ORDER:

Petitioner a political sufferer was assigned Acs.10.00 of land in S.No.805 of Medchal village on 27-10-1967. On 03-10-1990, the Revenue Divisional Officer, Hyderabad East Division, issued a show cause notice as to why the assignment in his favour should not be cancelled as the land assigned is within the reserve forest area and is covered by the ban, as per G.O.Ms.No.1122 Revenue (Q) Department, dated 29-06-1961, prohibiting assignment of such land. Petitioner sent a reply that the land assigned to him is not in Forest, as it was deleted by G.O.Ms.No.20 dated 18-01-1963 from forest area, and since he spent a huge amount for developing the land assignment in his favour cannot be cancelled. No action seems to have taken thereafter in pursuance of that show cause notice.

2. Subsequently, on 09-07-1996, the District Revenue Officer, Rangareddy District, issued a show cause notice to the petitioner, as to why the assignment of land made

to him should not be cancelled, for which the petitioner sent a reply on 02-09-1996. By his proceedings dated 16-12-1996 the District Revenue Officer cancelled the patta granted to the petitioner on the ground that the land assigned falls within the ban area as per G.O.Ms.No.1122 Revenue (Q) Department, dated 29-06-1961, and as no relaxation or approval from the Government was obtained by the then Tahsildar, Medchal, before assigning the land in favour of the petitioner. Questioning the said order of cancellation, petitioner preferred an appeal to the Commissioner of Land Revenue, who remanded the case to the Joint Collector (1st respondent) for deneo enquiry. After an enquiry, 1st respondent by his proceedings No.E5/1007/91 dated 20.05.2000, impugned in this petition, ordered cancellation of the patta granted to the petitioner on two grounds i.e. (i) petitioner did not suffer imprisonment for six months, and (ii) assigned land is within the belt area, covered by prohibition from assignment as per the Government Memo No.5079/D2/67-2, dated 05.01.1968 Rev. (Q) Department read with G.O.Ms.No.1122 Revenue (Q) Department, dated 29-06-1961.

3. The main contention of Sri Ramakrishna Reddy, learned senior counsel for the petitioner, is that since the show cause notice was issued under Section 166-B of Land Revenue Act 1317 Fasli, nearly about 30 years after the assignment and since suo motu power of review is expected to be exercised within a reasonable time as held in **YAMUNANAGAR CO-OPERATIVE HOUSE BUILDING SOCIETY v GOVERNMENT OF ANDHRA PRADESH** following the ratio in **STATE OF GUJARAT v PATEL RAGHAV,** and **IBRAHIMPATNAM TALUK VYAVASAYA COOLIE SANGAM v K.SURESH REDDY** confirmed by the apex Court in **IBRAHIMPATNAM TALUK VYAVASAYA COOLIE SANGAM v K.SURESH REDDY**, 1st respondent exercising suo motu power to cancel the patta granted to the petitioner is unsustainable. It is his contention that since G.O.Ms.No.1110 dated 26-05-1960, imprisonment for any term is sufficient, the assumption of the first respondent that imprisonment for six months is a condition precedent for a political sufferer being eligible for grant of a patta, is not correct and in any event since the Government Memo No.5079/Q2/67-2 dated 05-01-1968, relied on by the

1st respondent for cancelling the patta of petitioner is subsequent to the assignment made in his favour, cancellation of the assignment basing on such subsequent memo is improper.

4. The contention of the learned Government Pleader is that since as per the G.O.Ms.No.1276 Revenue (B) Department dated 23-12-1967, imprisonment for six months is mandatory for a person to become entitled to assignment of land as a political sufferer and since as per G.O.Ms.No.1122 Revenue (Q) Department, dated 29-06-1961 read with Memo No.5079/D2/67-2, dated 05.01.1968 Rev. (Q) Department, assignment of land within 10 miles from the cantonment area in the twin cities i.e., Hyderabad and Secunderabad, is prohibited and since the land assigned to the petitioner falls within that 10 miles area and since petitioner swore to an affidavit in 1995 that he is willing to take any house site in the city in lieu of the land assigned to him, as it was not delivered possession of to him, and since Government is ready to allot a house site to the petitioner at any place of his choice, and since the land assigned to the petitioner is urgently required for establishment of a school, there are no grounds to interfere with the order cancelling the patta in favour of the petitioner.

5. G.O.Ms.No.1276 dated 23-12-1967 relied on by the learned Government Pleader reads-

> "Under the scheme for grant of land to political sufferers obtaining in the Andhra Districts, a political sufferer has had to apply for the grant of land before 31-10-1949 in the first instance and in cases where those applications had been mislaid or not considered at all by the political sufferers' Advisory Committee, the applications should have been renewed before 16-12-1959, with valid proof to show that the original applications have been preferred before the first crucial date i.e., 31-10-1949. .....To merit the relaxation of the rules, the period of imprisonment suffered should not be less than six months as laid down in Government Memo No.3888 Revenue/65-1 dt.20-11-65. ....."

It is thus clear that the said G.O.Ms.No.1276 dated
23-12-1976, relied on by the learned Government Pleader, applies to assignment of land to political sufferers in 'Andhra Districts'. Medchal, where the petitioner was allotted land, is not in Andhra Districts, but is in Telangana Districts. Para-2 of the G.O.Ms.No.1110 dated 26-05-1960 relating to assignment of land to political sufferers in Telangana area reads-

> "The term 'Political Sufferers' for purposes of this concession, means persons who had been convicted and sentenced to any term of imprisonment in the cause of the

Indian Independence as a result of taking part in movements inaugurated either by the Indian National Congress or under its sanction, or by the Hyderabad State Congress or under its sanction. Dependent members of the families ……."

Petitioner claims that he comes under the category of Hyderabad State Congress Movement started for integration of the Hyderabad State with the Union Government, leading to 'Police Action' of September, 1948, which is enumerated as Item No.9 in the aforesaid G.O.Ms.No.1110 dated 26.05.1960. The fact that petitioner suffered imprisonment for a period less than six months for the purposes mentioned in G.O.Ms.No.1110 of 26.05.1961 is not denied or disputed. On the ground that he did not suffer imprisonment for six months respondents want to cancel the assignment made in favour of the petitioner, by invoking G.O.Ms.No.1276 dated 23-12-1967. Since petitioner does not belong to Andhra Districts and since he is assigned land in Telangana area as a political sufferer, since G.O.Ms.No.1110 dated 26.05.1960, does not lay down any particular period of imprisonment as mandatory for a person being eligible for assignment of land as a political sufferer, and since it is not the case of the Government that petitioner does not satisfy that criteria, mentioned in the G.O.Ms.No.1110 dated 26.05.1960, cancellation of the patta of the petitioner on the ground that he is not a 'political sufferer' within the meaning of G.O.Ms.No.1276 dated 23-12-1967, which does not apply either to the petitioner or the land assigned to him, is improper and is unsustainable.

6. As rightly contended by the learned senior counsel for the petitioner, since assignment in favour of the petitioner was made on 27-10-1967, when G.O.Ms.No.1122 dated 29-06-1961 prohibiting assignment of land within one mile of only was in force, the fact that Government by Memo No.5079/Q2/67-2 dated 05-01-1968 increased the belt area to 10 miles from the cantonment cannot be a ground for cancellation of the patta of petitioner because prohibition imposed by Memo No.5079/Q2/67-2 dated 05-01-1968 applies to future assignments but not to the assignments made earlier.

7. As rightly contended by the learned senior counsel, if the respondents wanted to

invoke the suo motu power of review, such power can and should be exercised within the reasonable period but not after lapse of nearly 30 years after assignment.

8. The contention of the learned Government Pleader is that petitioner agreed to give up the land assigned if he is granted a house site patta in any part of Hyderabad and that Government is prepared to grant a house site to the petitioner in lieu of the land assigned to him earlier. The above offer seems to have been made by the petitioner way back in 1995. When the offer was not accepted for several years it should be deemed to have lapsed and so such offer made by the petitioner, cannot be made a ground for cancellation of the patta, even without making a reference thereto in the show cause notice.

9. The other contention is that in his affidavit petitioner stated that he is not put in possession. That affidavit is not produced. On the other hand, petitioner in his reply to the show cause notice seems to have claimed that he spent a huge amount for developing the assigned land, because in the impugned proceedings of the 1st respondent, it is mentioned that when the show cause notice was issued to the petitioner on the report of the Revenue Divisional Officer, Hyderabad East, the petitioner sent a reply, reading -

> "The assignee further stated that the particular area allotted to him is not notified as Forest, it has been deleted from the Forest as per G.O.Ms.No.20, dt.18.1.63, he has spent huge amount to develop the land" (emphasis supplied)

The fact that the respondents did not take any action in pursuance of the show cause notice issued in 1990 and issued a fresh notice dated 09-07-1996 shows that the respondents have accepted the explanation of the petitioner that he spent a huge amount to develop the land and so it cannot be said that the petitioner is not in actual possession of the land. As stated earlier, respondents, having kept quiet for 10 years, on the offer alleged to have been made by the petitioner, cannot now say that they are prepared to look into the offer made by the petitioner and allot some house site to him. It is well-known that an offer should be accepted before it becomes stale. Much water has flown under the bridge after 1995, when the offer allegedly made by the petitioner in 1995 was not accepted till now, respondents who

say that they would look into that offer, cannot by taking shelter on the offer allegedly made by the petitioner, say that they have a right to cancel the assignment made in favour of the petitioner, even without accepting the offer and allotting a house site.

10. For the above reasons, the order passed by the first respondent on the show cause notice issued by the second respondent is liable to be and hence is quashed.

11. In the result, the writ petition is allowed and the order No.E5/1007/91 dated 20-05-2000 of the Joint Collector, Rangareddy District, is quashed. No costs.

(C.Y.Somayajulu, J.)

Date: 30.03.2005

Cvrk

Note: L.R. copy to be marked.

THAT RULE NISI IS MADE ABSOLUTE AS ABOVE. WITNESSETH THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE ON THIS WEDNESDAY THE THIRTIETH DAY OF MARCH 2005.

..... REGISTRAR

One fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (for his Lordship's kind perusal)

To

1. The Joint Collector, Ranga Reddy District, Hyderabad.
2. The District Revenue Officer, R.R District, O/o District Collector, R.R District, Hyderabad.
3. 2 copies to the Government Pleader for Assignments, High Court Buildings, Hyderabad. (OUT)
4. 2 CD copies
5. 1 CC to MR.MAHENDER REDDY
6. 8 L.R. copies.
7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
8. The Secretary, A.P. Advocates' Association Library, High Court Buildings, Hyderabad.